

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2130 of 2000

to

FIRST APPEALNo 2135 of 2000

with

CIVIL APPLICATION NOS. 8365/2000 TO 8370/2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.M.MEHTA

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO. LTD.

versus

BHIMA GOGAN ODEDRA

Appearance:

MR PV NANAVATI for Petitioner

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE K.M.MEHTA

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

In this group of six appeals, at the instance of the appellant - New India Assurance Company Ltd., Insurance Company of truck No. GRY 4559, under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the new Act') the challenge is against the liability of the Insurance Company for the payment of compensation to the claimants on two grounds, namely, (a) that the injured persons were travelling in goods vehicle without authority and illegally and (b) the driver of the offending truck was not holding valid and effective licence to drive public goods vehicle.

2. In so far as the first contention, as stated above, is concerned, the Tribunal has dealt with this aspect in paras 76 and 77 of the impugned judgement. Relying on the decision of the Hon'ble Supreme Court in "New India Assurance Company Vs. Satpal Singh" reported in AIR 2000 SC 235 it has been held that under the new Act, an insurance policy covering third party risk is not required to exclude gratuitous passengers in a goods vehicle, no matter that the vehicle is of any type or class. Hence, the decision rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the Insurance Company in respect of any accident which occurred or would occur after the new Act came into existence.

3. We have gone through the relevant observations and discussions made by the Tribunal in the impugned judgement paragraphs 76 and 77 and the decision of the apex court in Satpal Singh's case (supra). The view taken by the Tribunal is quite justified. It does not require any interference. Therefore, the liability sought to be avoided on the ground of unauthorised passengers travelling in the goods vehicle is not sustainable. This contention was reiterated before us and after having taken into consideration the factual scenario emerging from the record of the present case coupled with provisions of Section 147 of the new Act and the proposition of law on this score laid down in Satpal Singh's case (supra), we are of the clear opinion that this contention is, totally, meritless and is required to be rejected.

4. Obviously, next, it would lead us to appreciate and examine the second contention which is pertaining to the licence of the driver. The contention is that the

vehicle involved in the accident was goods vehicle and the risk in respect of passengers carried in the goods vehicle is not required to be covered under the policy. In this connection reliance is, also, placed on the decision of the Karnataka High Court in Oriental Insurance Company Vs. Smt. Irawwa reported in AIR 1992 Karnataka 321. Firstly, the aforesaid contention was not raised before the Tribunal. No reasonable explanation was given as to why it was not raised. It is not a pure and simple question of law which could be permitted to be agitated in the first appeal. This is a mixed question of law and facts. Therefore, this contention being an afterthought, in absence of certain factual material, cannot be permitted to be agitated. Secondly, in the alternative, even if it is permitted to be raised, then also, it is without any substance in view of the amended provisions of the new Act. The decision of the Karnataka High Court in the case of Oriental Insurance Company (supra) relied on by the appellant stands overruled by the implication in view of the decision of the Hon'ble apex court in Satpal Singh's case (supra). It has been clearly, observed in para 8 of the said decision that proviso to Section 147(1) of the new Act shows that it is a recast provision by placing the erstwhile clause (iii) as the present clause (ii). In other words, clause (ii) of the proviso in Section 95(1) of the old Act is totally non-existent in the proviso to Section 147(1) of the new Act.

5. It becomes, therefore, clear that in view of Section 147 of the new Act, the act policy must be a policy which insures the person or class of persons specified in the policy to the extent specified in sub-section (2) -

- (i) against any liability which may be incurred by him in respect of the death of or bodily (injury to any person, including owner of the goods or his authorised representative carried in the vehicle) or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.
- (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

6. The textual and contextual reading and examination of the aforesaid provisions would make it evident that the limit contained in the old Act has been

removed and the policy should insure the liability incurred and covered, injury to any person including the owner of the goods or his authorised representative carried in the vehicle. Not only that, the legislature has, also, taken extra caution. Even the policies which were in force on the date of commencement of the Act by, specifically, providing that any policy of insurance containing any limit regarding insurer's liability shall continue to be effective for a period of four months from the commencement of the new Act or till the date of existing of such policy whichever is earlier. It would, clearly, go to indicate that after the said period of four months, a new insurance policy consistent with the new Act has to be obtained.

7. In this context, it must be noted that under the provisions of the new Act, an insurance policy in respect of third party risk does not require exclusion of gratuitous passengers in a vehicle irrespective of the type and class of the vehicle involved in the accident. The liability of the Insurance Company would, undoubtedly, arise even in respect of injury or death of passengers in case of a third party insurance if the accident takes place or would occur after the introduction of the new Act. The second contention is, therefore, meritless and is required to be rejected.

8. The sole contention on the aforesaid two grounds raised on behalf of the appellant is unsustainable, unsupportable and unacceptable. Therefore, the sole contention for exclusion of the liability on the aforesaid two grounds must be rejected. No other contentions are raised. Since in this group, the appellant is Insurance Company, no submission is made on the merits of the matter. The special defence propounded in view of sub-section (2) of Section 149 of the new Act is not justified. The view taken by the Tribunal in rejecting such sole contention is, in our opinion, fully justified. We are, therefore, unable to uphold the contention that the Insurance Company cannot be fastened with the liability for the payment of compensation for injuries or death caused in a vehicular accident for the passengers in the goods vehicle even after the new Act, is, totally, without any substance. It is, rightly, rejected by the Tribunal.

9. We, therefore, approve and affirm the said view and we are left with no alternative but to dismiss this group of six appeals at the threshold. Accordingly, the appeals are dismissed.

10. The amount of Rs. 25,000/- each deposited before this court along with the appeals is directed to be transmitted to the Tribunal for passing necessary orders for disbursing the amount.

In view of the dismissal of the appeals, no orders are passed on the Civil Applications.

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